BAR BULLETIN

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BAR BULLETIN

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VOL. 16 SEPTEMBER, 1940 No. 1

ON TO CORONADO

SEPTEMBER 25-28 are State Bar Convention days at Hotel Del Coronado. It is the one opportunity of the year when lawyers and judges may get together to discuss the problems and plans of Bar and Bench.

Usually, the attendance at the annual convention is 400 to 600 members of the Bar—a small percentage of the total bar membership. About the same faces are seen at each succeeding convention—men and women who take a keen interest in their profession and its organization work. The great majority, unfortunately, do not attend. Whether from lack of interest, or more personal reasons, one can only guess. It is hoped the coming convention will prove the exception in the matter of attendance. About half the lawyers of the State live within three or four hours of the meeting place, and the trip offers no hardships and very little expense.

The conference of California Judges, held in conjunction with the Bar Convention, always shows a larger percentage of its members in attendance than is the case of the bar. It would appear, therefore, that the members of the bench regard their annual meetings of more importance and benefit than the average bar member regards the State Bar Convention sessions.

There are many committee reports of great importance to be presented, and numerous resolutions to be considered by the Conference of Bar Delegates. All should command the earnest attention of the entire bar membership. For these reasons it is hoped that the Los Angeles Bar Association delegation will be larger than usual.

WILLIAM P. JAMES

AT a meeting of the Los Angeles Bar Association held on Wednesday, August 28, 1940, the following Resolution in memoriam of JUDGE WILLIAM P. JAMES was unanimously adopted:

BE IT REMEMBERED:

Honorable William P. James, senior Judge of the United States District Court, Southern District of California, died July 28, 1940. He was seventy years of age. He was born in Buffalo, New York, January 10, 1870, and came to California when he was three years old, graduating from the Los Angeles High School in 1890. For a time he was a reporter for Los Angeles and San Francisco newspapers. He was admitted to the Bar in 1894 and began his law practice in Los Angeles. From 1903 to 1905 he efficiently served as Deputy District Attorney for Los Angeles County.

His work as a jurist covered a period of thirty-five years. From 1905 to 1910 he was a judge of the Superior Court of Los Angeles County; from 1910 to 1923 he was a judge of the California District Court of Appeal; and from 1923 to 1940, by appointment of President Harding, he was a judge in the United States District Court, Southern District of California.

Certainly no judge ever realized more conscientiously than he the significance of Chief Justice Marshall's statement that "The Judicial Department comes home in its effect to every man's fireside. It passes on his property, his reputation, his life, his all," and certainly no judicial officer ever wore the judicial ermine with greater distinction and honor to the Bench, to the Bar, and to the public generally, than William P. James.

His beloved associate, Judge Paul McCormick, has written: "The nation has lost one of its ablest and most experienced judges. . . . Judge James was the soul of honor, conscientious to the utmost, sympathetically understanding and merciful in his judgment of his fellow men; he was yet an uncompromising defender of the truth and of public and private rights." Who could paint a more truthful portrait of William P. James, his integrity, gentleness and the strength of his character?

As a Judge he commanded the respect of the public and the Bar. His decisions were made after carefully weighing the testimony and considering the law. He was fair and just in his rulings and accorded patient and courteous hearings to all who appeared before him, and complied with every requirement in the exercise of his high office. He was in the highest sense true to himself, and paraphrasing Shakes-

peare, it followed as the night the day, he could not then be false to any man.

Especially when presiding over jury trials were Judge James' personal characteristics most evident. The dignity maintained without effort, the quick comprehension, the unfailing patience, the prompt ruling, the serene impartiality, and, when required, the most absolute courage and independence, made him, as was said by one of his other associates, Judge Jenney: "as near the ideal trial judge as was possible."

Simplicity, modesty and learning characterized his life and judicial career. As a judge, his life was necessarily one of thought and study, and enforced retirement from much of this busy world. He declined to accept many of its offered and choicest distinctions and honors. The surges of faction and of passion, the heat of ambition, and the thirst for power, never tarnished his career.

Throughout his life, and in a period of vast economic, social and political changes, Judge James represented the best traditions and the highest ideals of his profession. The forthrightness of his character, his serenity and calm, his retiring way of life, devotion to his Country and its Constitution, his affection for the young and respect for the old, his courteous bearing, his tender charity, his reluctance to give offense and his readiness to forgive it, long have been traditions with his neighbors, with the public and with the Bench and Bar.

We shall not see his like again.

BE IT FURTHER RESOLVED that this Resolution be presented to the United States District Court of this District with the request that it be engrossed upon the minutes of the Court; and

BE IT FURTHER RESOLVED that a copy of this Resolution in memoriam be sent to the family of Judge William P. James as a profound expression of our sincere sympathy in their irreparable loss.

Respectfully,

LOS ANGELES BAR ASSOCIATION,
By VICTOR E. SHAW, Chairman
EDWARD D. LYMAN
FRANK P. DOHERTY
A. I. McCORMICK
GEORGE M. BRESLIN

LAWYERS' REFERENCE SERVICE SUCCESSFULLY LAUNCHED

By Vernon Spencer, of the Los Angeles Bar

"Every Citizen is entitled to Justice according to Law, and where necessary for the protection of his right, to counsel"

SINCE the announcement of the Lawyers' Reference Service in the June issue of the BULLETIN, the cooperation of the members of the association has not only been satisfactory, but enthusiastic, and it appears that, though no particular effort has been made to push the plan in so far as lawyers' participation is concerned, it is now operating with a more representative group of lawyers, expressing a wider preference for particular fields of practice than in any other community where similar plans are in operation.

In connection with the scope and field of service to be reached by the Service it is interesting to note that the State Bar Committee on Legal Clinics came to the same conclusions, substantially, as the Los Angeles Bar Association as to the primary reason for the need of such a service. The State Bar committee in its report to the Board of Governors said:

"Your committee was appointed to conduct an investigation to find out what, if anything, the Bar might or ought to do to make legal services available to citizens in the lower income group and report thereon. The inquiry was *not* to be directed toward the needs of indigents, for it is assumed that their needs will be cared for by legal aid societies.

"There is little definite data available, but it appears to reveal a need among a great number of people for legal advice. This need for the most part is not being satisfied. There are many attorneys not now making a good living who could to some degree satisfy that need.

"By proper publicity and some organizing it is felt these two classes can be brought together and the two problems to some extent at least be answered. Every proposal involved (a) finding of lawyers who are willing to serve the public at fees within the ability of the low-income group to pay, and (b) making their availability known * * *."[1]

It will be recalled that the Lawyers' Reference Service is divided into three sections, namely: (1) a section for general reference; (2) a section for service of the low income group, which is not eligible for service from the Legal Aid Clinic; and (3) a section for reference to lawyers who desire to confer and counsel with specialists.[2]

As of September 1, 1940, 260 members of the Association have registered. In the general reference file there are 811 reference cards, divided into 59 fields of practice. The low income reference group now contains 470 registration cards in 44 different fields; and the consultant reference group has 570 registration cards covering 75 fields of specialization.

The following table indicates the wide range of preferences of lawyers in which they feel best qualified to render assistance under the Lawyers' Reference Service.

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[1]State Bar Journal, August, 1940, Part 2 Vol. 15 No. 8 Page 104 *et seq.*

[2]See L. A. Bar Bulletin, June, 1940, Vol. 15, No. 10 for basis upon which registration will be accepted in any or all of these three groups.

LIST OF PREFERENTIAL SUBJECTS REPRESENTED IN THE THREE SECTIONS OF THE SERVICE

Accounts and Accounting
Administrative Law
Admiralty Law
Adoption
Agricultural Law
Aliens
Appellate Practice
Authors' Rights
Aviation Law
Banking Law
Bankruptcy Law
Brokers and Brokerage
Building and Loan
Business Counsel
Cemetery Law
Collections
Condemnation Proceedings
Corporate Securities
Corporation Law
Criminal Law
Customs
Divorce and Domestic Relations
Equity Matters
Federal Trade Commission
Federal Trial Work
Finance
Food and Drug Regulations
Fraud Orders
Fruit and Produce Industries
International Law
Interstate Commerce
Installment Sales
Insurance
Labor Relations
Liquor License Matters
Malpractice (Defense)
Mechanics' Liens
Mexican Law
Military Law
Mining Law
Motion Picture Law
Motor Carrier Law
Municipal Law
Negotiable Instruments
Oil and Gas
Organization Planning
Patent, Trademark and Copyright
Personal Injury
Postal Laws
Probate
Public Utilities
Radio Laws
Real Estate Law
Receiverships & Reorganizations
Street Improvements
Suretyship
Taxation
Torts
Trade Regulations
Transportation
Trial Practice
Trusts
Unfair Competition
Veterans' Matters
Warehouse Law
Water Rights
Wills and Trusts
Workmen's Compensation

FOREIGN LANGUAGES REPRESENTED IN SERVICE

Cantonese
Croation
Danish
French
German
Greek
Hungarian
Italian
Jewish
Jugoslav
Norwegian
Rumanian
Serbian
Slavonian
Spanish
Swedish
Yiddish

JURISDICTIONS OTHER THAN CALIFORNIA IN WHICH LAWYERS ARE REGISTERED

Arizona	Nebraska
British Columbia	Nevada
Canada	New Jersey
Colorado	New York
Connecticut	North Dakota
District of Columbia	Ohio
Florida	Oklahoma
Germany	Oregon
Idaho	South Dakota
Illinois	Spanish American Republics
Massachusetts	Switzerland
Mexico	Utah
Michigan	Washington

The foregoing summary adequately demonstrates not only the versatility of the members of our Bar, but is conclusive evidence that the cooperation of the members of the Association is building a representative structure adequate to serve the needs of all those who seek the facilities of the Service.

Not sufficient time has elapsed since the Service was first announced to get any detailed picture of the degree of public acceptance, nor has any effort been made so far to acquaint the public with its existence. However, since August 20th, when the Service was first made available, and September 12th the Association received twenty-six inquiries for assistance. Of these inquiries, fifteen were for reference in the general reference group, seven in the low-cost reference group, and four in the consultant's reference group.[3]

General interest is indicated by favorable reference in the American Bar Association Journal of July, 1940, in the Report of State Bar Committee on Legal Clinics, and numerous requests from bar associations throughout the country for copies of the June issue of our BULLETIN in which the plan is explained in detail. Members of the Association can do much to broaden the scope and field of the Service by first informing interested parties of its existence and availability, and secondly, by promptly registering, thus giving tangible evidence that our members stand ready to meet the challenge that: "Every citizen is entitled to justice according to law, and where necessary for the protection of his right to counsel."

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[3]See Report of State Bar Committee on Legal Clinics, State Bar Journal, August, 1940, Part 2, page 143 for summary of experience under Experienced Lawyers' list maintained by Los Angeles Bar Association from May 10, 1937 to May 11, 1940.

WHAT'S NEW AT THE LAW LIBRARY

By Thomas S. Dabagh, Librarian

ACCESSIONS, 1939-1940: A net total of 6,658 volumes were added to the collection during the last fiscal year, as compared with a net of 2,203 volumes during the previous year. The totals include almost a thousand volumes of reports of decisions, over seven hundred volumes of session laws and statute compilations, some three hundred and sixty periodicals, and over six hundred texts. It is estimated that the Library collection now numbers over 128,000 volumes, including the branch collections of about 25,000 volumes.

GIFTS, 1939-1940: Substantial gifts of books were received during the last fiscal year. Among others, mention should be made of the courtesy of Senators Johnson and Downey, and Congressman Ford and Kramer, in furnishing between them over a hundred volumes of the Congressional Record, needed to complete the Library's set. Forty-five books were received from the Library of John D. Home, and important gifts were also received from the following local donors: R. C. Backus, Leo Shaw, E. C. Campbell, Joseph N. Cormack, E. S. Williams, Reed Briggs, Pacific Mutual Life Insurance Company, Harry G. Balter, Charles R. Baird, H. E. Allport, Southern California Historical Records Project, Los Angeles Bar Association, Edward Alton, Frank Waters, Judge James H. Pope, L. J. Styskal, A. S. Goldman, Mitchel Moidel, Miss Oliver, Mrs. Herbert J. Goudge and Lester E. Hardy.

NEW BOOKS

Selected titles from among the books received recently at the Library are offered as follows:

ADMINISTRATIVE LAW. Independent Commissions in the Federal Government, by Doyle, is a study of the institutional aspect of such agencies as the I.C.C., F.C.C., S.E.C., and N.L.R.B. It discusses the legal status and judicial powers generally of the agencies, and describes their operation.

AUTOMOBILES. Bentley's Autoist and the Law is designed for laymen and students, but is useful to lawyers as a locally prepared text on the more common points of law arising from the operation of automobiles. Leading cases are referred to by name.

COMMUNITY PROPERTY. A translation of three contemporary commentaries on the community property laws of Spain in the Nueva Recopilacion is offered in Robbins' Community Property Laws.

COURTS. The Machinery of Justice in England, by Jackson, is a somewhat entertainingly written account of the English civil and criminal law courts. A chapter on the "personnel of the law" is of particular professional interest.

ESTATES. Dodge and Sullivan's Estate Administration and Accounting presents a comprehensive review of New York practice, with forms and schedules.

HOUSING. Legal Problems in the Housing Field, by Russell and Keyserling, embraces both private and public housing problems, and sketches the administrative and economic backgrounds as well. Ebenstein's Law of Public Housing reviews Federal and State law, and includes brief statements of the housing problem in this country, and of foreign experience with public housing.

LEGAL PHILOSOPHY. Fuller's Law in Quest of Itself is an easily read discussion of legal positivism as opposed to the natural law doctrine, on the problem of whether judges and lawyers, for example, should apply themselves to thinking in terms of what *is* the law, or of what it *ought* to be.

TAXATION. Social Security Payroll Taxes, by Compton, is an explanatory text, and is offered as "a guide to the rules by which payroll taxes are administered and by which their cost to the taxpayer may be minimized."

TIDELANDS. The vexing question of tide line boundaries is given attention in Patton's Relation of the Tide to Property Boundaries, which sketches the background of pertinent scientific principles and physical facts.

FRESNO'S NEW FEDERAL COURT BUILDING DEDICATED BY JUDGE ALBERT LEE STEPHENS

Address of Judge Albert Lee Stephens of the U. S. Circuit Court at the dedication ceremonies of the new U. S. Post Office and Court House at Fresno, Sept. 6, 1940.

THIS is a grand occasion and fortunate indeed are we to be able to play our ephemeral parts in it.

But only a few of us deserve any credit for the transformation of lumber, steel, cement and stone into this temple of usefulness—civilized, peaceful usefulness. Many of you have served this productive section of Central California and have had a proud part in achieving this structure. Not many, however, have had directly to do with it. There are names carved in stone in its corridor—some of them famous names. We should, of course, and we do generously accord distinction to the man whose brain formulated the plans for this structure, and we give high honor to those who held official position during the period of its construction. These names will be read far down the ever-lengthening pathway of time.

Names though seem almost useless; they are the contents of vacuums—only deeds are substance. Recorded in individual signatures from the lowest part of the foundation of this building to the top of the staff from which Old Glory blows, are deeds of men. Every fabricated girder in it has the quality of courage and masterfulness that individual free men have put there. Every motion of the trowel was poor or good or excellent. Every brick was placed in the peculiar manner of the mason's handiwork. And so I say to you as I view this completed accomplishment that I am pleased to read the revered name of our President and I am pleased as well to read the acts of men and women—many of them—who put their mark of excellence upon its every part. In the long, long run it will mean more that the citizen shall be able to read the integrity of labor in its construction than that some few names may be read as those who held office during its construction.

Whether or not the immortal poetry we label Shakespeare came from a brain of a man bearing that name matters not at all. The poetry sprang from a human brain and is ours!

So today I pay tribute to those unmentioned persons who in the orderly manner of our competitive civilization built, not for any leader by any name or title but built a house for the utilization of a free people going about the task of governing themselves.

In almost every city of the land today there is a great building bearing the inscription, "U. S. Post Office and Court House." Perhaps the Postmaster-General can tell us whether or not there is any particular significance in the co-housing of these great institutions of government. It seems to me that there is. It is a wise policy of a democratic-republic to provide a dependable, secret

and economical machine for the speedy exchange of information and ideas not only from the government out to the people but from the people in to the government and from citizen to citizen. It is a wise policy of a democratic-republic to provide an independent judiciary for the impartial arbitrament of civil differences and for the fair and open trial of those accused of crime. Without the ready and dependable exchange of information and ideas among men courts would tend to become provincial and locally dictatorial. Without the courts the postoffice would be put to the use of frauds and sharpers and would be used to spread insidious propaganda. The Postoffice Department and the Department of Justice are not strangers but are teammates in the government service.

In the language of the street—meaning the way we talk when not dressed up—my status here today as the representative of the Federal Bar and of the Federal Judiciary is a Big Order for me.

At the outset of the remarks which I am about to make in that capacity, may I impress you with the not too startling fact that lawyers and judges are made out of the run of the mill of men and women. That's a good thing. We free people want no overlordism even in judges. There is sound reason for this—a class apart could possibly bring the law nearer to a mathematical science but no class apart can know true justice. I cannot conceive of true justice ever being reduced to the absolute. I can and do conceive of justice being consistently

related to the civilization we *live*. Judging is the interpretation of the *habits*, the *customs* and the *aspirations* of a people. No outsider can make that interpretation; it can be made only by one of the people.

This is the very genius of the Judge and Jury System, and no matter what its weaknesses, I say to you hold on to that ancient custom.

Judges are not much better than other people. Maybe you think I am unduly complimenting my kind. The nature of the judge's duty does, however, get under his skin. *Conscience is a constant.* No one could be more unhappy than a judge under the lash of conscience.

Some lawyers are shysters—fortunately there are few—and it must be confessed in large cities they prey more or less successfully. They are parasites which Bar Associations must ever pursue. My compliments, though, to the lawyer—that fellow who draws your will for $10.00, probates your estate and lends his statutory fee to the needy widow. The man to whom you go for advice, both legal and personal. May God bestow his blessings upon his head!

Many lawyers as well as others keep in their minds undisplayed stores of riches fearing perhaps the charge of presumptuousness. This can be overdone. Let your thoughts become active things. It is an interesting paradox in this surprising life we live that each individual is always alone yet never can be alone. One life is made up of successions of eventful contacts with other lives, and thought born into action is the mutualizing agent. Thus, it seems to me, title to our own thought is not always ours in fee simple sole but more often is held in common with another. It is not, however, solely the duty nor yet the spirit of generosity that should inspire the sharing of our inner selves; instead this should spring from the art of divination and the grace of yielding unasserted claims.

It may be truly said that he who suppresses his hopes and his emotions builds the wall of his own prison.

Within this graceful structure which we today christen is a courtroom beautiful and dignified through its sincere simplicity. Here is dedicated a forum in which the honest ambitions of lawyers may take wing, and here is a workshop for judges courageously devoted to truth and justice. This is a sacred place.

This has been a very happy day for me, and you need not fear that it has been too happy for you in your realization of having this beautiful thing. Use it not as something brought here and left here and not quite rightfully yours, but enjoy it as an ultimate and genuine possession of your own.

The members of the Federal Bar and those men who sit on the Federal Bench bring you their compliments and assurances of their stern resolve to serve you up to the full strength of their powers, believing that self should be secondary in importance to the successful operation of our country's government—a government founded upon and gloriously continuing under the ever-expanding American principles of Individual Right and Liberty.

"JUSTICE AND THE POOR" LEGAL AID A NATIONAL PROBLEM

By Ewell D. Moore, of the Los Angeles Bar

ALTHOUGH legal aid has been advocated and fostered by the American Bar for 20 years, in a more or less organized way and on a national scale, the movement has made slow headway.

Even prior to 1920 groups of public-spirited citizens, usually sponsored by members of the bar, and financed by local bar associations, provided a very limited service to those needing assistance in connection with their legal troubles.

But it was not until 1920 that the American Bar Association appointed a special Committee on Legal Aid Work. That committee, although changing in membership from time to time, has functioned ever since. It has seen the number of legal aid organizations in the country increase from 41 in 1920, to 118 in 1940. The present magnitude of the work and the future prospects will be appreciated by reference to the 1940 report of the American Bar Association's Committee on Legal Aid Work. It shows that in 1939 Legal Aid organizations in 54 of the larger cities of the country operated at a gross cost of $515,433; that these organizations handled 211,465 cases, and collected for their clients, $685,014.

But a mere statement of dollars and cents factors does not give a true picture of the work. "The ablest members of the profession," says the Committee in its last report, "have been stating for years that adequate aid to the poor is essential to the administration of justice in a democracy. * * * The efficient giving of such aid by the organized bar, as distinguished from the sporadic giving of it by individual members of the bar, wins the appreciation and gratitude of the community."

Aside from the 118 organizations rendering legal aid service, there are 35 bar association committees, 35 legal aid societies, 18 public defenders, 14 welfare organizations not limited to legal aid, 7 law school clinics, 5 voluntary defenders, and 4 public legal aid bureaus. All of these give legal aid in varying degrees. Nevertheless, of the 93 cities with a population over 100,000, 34 have no legal aid facilities of any sort. It is in these cities, the Committee urges, that immediate efforts for the development of legal aid should be concentrated, and it "calls upon the state and local bar associations for cooperation."

Last year a member of the Committee, Mr. Lane Summers, secured the passage in the State of Washington, of a statute "which may in time," says the report, "go far to solve the problem of financing and supervising legal aid work. It authorizes county commissioners in the more populous counties to declare legal aid work a *public necessity* and thereupon to appropriate money for its support. The money is to be disbursed by the Washington State Bar Association, which is an incorporated state-wide bar association of which every lawyer admitted to the bar automatically becomes a member."

Why would it not be an opportune time for our own State Bar to sponsor such a statute for California? Certainly the problem is a public one, and a few thousand lawyers, even though all of them should give financial aid, could not begin to carry the burden. They have done a great deal—some of them at least—and most of the bar associations are willing to continue to do their best.

STATE BAR AND LEGAL AID

It is encouraging that the State Bar is taking action to continue its investigation of the situation. Its Committee on Legal Aid has made a report, which appears in the supplement to the State Bar Journal for September, and which will come up for discussion at Coronado this month. The report contains a brief review of the developments during the past year, and recommends that the Committee be containued as a permanent committee of the State Bar organization. Of course there has been such a committee for a long time, but the problem is still with us, without prospects of solution. It would seem that the Committee can do little except report on the independent activities of local bar groups, under the limited authority granted to it by the Board of Governors.

LEGAL AID IN LOS ANGELES

The Los Angeles Bar Association has encouraged, promoted and supported legal aid in this county for more than ten years. At first the service was woefully inadequate, due to finances; latterly, there has been some improvement in this respect. But it is still inadequate.

For several years the Legal Aid Foundation has received an annual allotment of money from the Community Chest. In prior years the amount made available from that source has proved wholly inadequate, and the Los Angeles Bar Association, in recognition of what it believed to be its duty, solicited members for contributions in order to make up, in part, the deficiency of the Foundation's minimum needs. For example, in 1937 members gave $3,239.50, and in 1939, $3,385.50, to supplement the funds allocated by the Chest to the Foundation.

But this was not a solution of a problem vital to the entire citizenry. Moreover, such requests for contributions adversely affected the more important annual "campaign" of the Chest.

This year the Bar Association, the Legal Aid Foundation, and the Community Chest entered into an agreement whereby the Association agreed to cease all solicitation of its members for funds to make up the deficiency of the Foundation's minimum requirements, and the Chest in turn agreed to allocate to the Foundation for the twelve months ending February 28, 1941, a total of $8,910.00.

This is nearer a solution of the problem in Los Angeles than we have ever achieved before. The amount made available, however, is still insufficient to meet the requirements.

A REVISED LAWYERS REFERENCE SERVICE

To All Members of the Los Angeles Bar Association:

THREE years ago your Association established the "Experienced Lawyers List" in order to meet the demand of both professional and lay applicants who inquire at the office for reference to a lawyer. Under that plan only those members of the Association engaged in active practice for five years or more have been eligible for the list, and a small fee to cover printing and other costs has been charged to all members desiring to be listed. These past three years have demonstrated the usefulness of such a service to both the public and the members of the profession. Surprising have been the number of inquiries from laymen not acquainted with any lawyer. Surprising also is the report of many members who registered for the list, that the matters referred to them have proved to be "substantial."

Prospective clients requesting reference to a lawyer tend to fall within three general categories:

(1) Members of the profession seeking a specialist or a lawyer experienced in a particular field of the practice;

(2) Laymen of the lower income groups seeking a lawyer who is willing to serve them for a relatively low fee within their means; and

(3) Other laymen seeking a lawyer in a particular field.

Because it is felt that the old list has not been sufficiently representative of the membership of the Association and does not adequately meet the service demands of the three groups just mentioned, your Board of Trustees has concluded to open the registration to members of the Association *without* charge, to change the name of the service from "Experienced Lawyers List" to "Lawyers Reference Service," to extend the scope of the Service to meet the needs of all three groups of applicants, and to endeavor to make the revised service truly complete and representative by urging all members to fill out the enclosed "Registration Form" and mail it promptly to the office of the Association. (An additional copy of the "Registration Form" for your file is also enclosed.)

With the names of those lawyers who consent to assist in this work by receiving clients referred through the Lawyers Reference Service, the Executive Secretary will prepare three card indexes:

(a) One to be used exclusively for references in response to inquiries from members of the profession, and to be compiled from the information given under items (19), (20), (12) and (13) of the "Registration Form";

(b) A *second* index to be compiled from the information given under items (22), (16), (17), (18) and (21), and to be used exclusively for references in response to inquiries from those lay applicants of small means who must have a lawyer willing to serve them for a relatively small fee; and

(c) A *third* index to be used in handling the inquiries of all other lay applicants, and to be compiled from the information given under items (16), (17), (18) and (21).

The names of many members will, of course, appear in all three indexes, others in only two, and some in only one. For obvious reasons, registration of any one member in each index will be limited to four fields of the practice. Each index will be classified according to the fields represented. The information given under items (14) and (15) will also be carried on to the cards in each index.

The mechanics for the operation of the service are described in the rules which are printed on the back page of the "Registration Form." It is believed that this system will give the lay-applicant the widest practicable latitude in choosing his own lawyer, and at the same time provide an equitable method of rotating the references among the members of the Association.

Your Board of Trustees hopes that each of you will cooperate to insure the fullest success of the Service by filling in the "Registration Form" and returning it now; by reporting to the Executive Secretary any suggestions that may occur to you for improvement of the Service; and by keeping a record of all matters referred to your through the office of the Association, to the end that your Trustees may thus be enabled to compile from time to time an accurate report to the membership of the workings of the Lawyers Reference Service.

Respectfully submitted,

HERBERT FRESTON,
President, Los Angeles Bar Association.

TRIAL OF JOHN PETER ZENGER FOR LIBEL AND THE BEGINNINGS OF FREEDOM OF SPEECH IN AMERICA

By Leslie C. Tupper, of the Los Angeles Bar

The article below was prepared and delivered by Leslie C. Tupper on the Bar Association's weekly radio program (Station KFAC). It is of interest to those who missed hearing it.

THIS is the story of a humble printer, of a great lawyer, and of a case which laid the foundation of our American freedom of the press and freedom of speech. The story begins in New York, about forty years before the American revolution.

The people of the colony of New York in 1732 were not pleased with the new Colonial Governor sent from England. The previous colonial governors had been corrupt in some ways, but the new governor, William Cosby, was worse in many ways. Acts of oppression by Governor Cosby and his party had caused considerable indignation throughout the colony. The Colonial House of Assembly took his side and the council offered little or no resistance to his arbitrary measures. The courts did attempt to offer some resistance. However, when Lewis Morris, Chief Justice of the Supreme Court of New York, declined to

obey an illegal order of the governor, he was removed and another justice, more amenable to the wishes of the governor, was appointed in his place.

William Bradford published the only newspaper in New York at the time; Bradford was under the influence of representatives of the crown. In 1733 the leaders of the governor's opposition induced a poor German printer, John Peter Zenger, to establish, as a means of defense of the rights of the people, the New York Weekly Journal. The squibs, ballads and strong criticisms of the government printed in Zenger's paper aroused the anger of the governor and his council. Unsuccessful efforts were made to secure an indictment of Zenger for libel from the grand jury.

In order to put a stop to the attacks on the government, the council finally ordered the arrest of Zenger. His friends procured a writ of habeas corpus which resulted in his being admitted to bail; but the amount of the bail was fixed so high that Zenger was unable to procure it. After further unsuccessful attempts to induce the grand jury to indict him, the Attorney General filed an information charging that an article printed in Zenger's newspaper contained two libels against the governor and his council.

The statements printed by Zenger on which the charges were based were generalities and not such as could be seized upon as the basis for prosecution in this day of freedom in the discussion of political and governmental questions. In 1735 the law of seditious libel was, however, rigid and harsh. The truth of the statements claimed to be a libel could not be proved. The question whether or not a particular statement was a libel was for the judge and not the jury.

We have seen how the governor had arbitrarily removed the former chief justice of the court, and had appointed another in his place. Counsel for Zenger, as the first step in the defense of their client, filed objections to the appointment of the new judge on the ground that the appointment had been illegally made. For filing these objections, Zenger's counsel were disbarred by the court, and Zenger was left without counsel.

Friends of the accused, feeling that the trial would be dominated by the governor, induced a retired lawyer of Philadelphia named Andrew Hamilton to defend Zenger. The birthdate of Andrew Hamilton is not known but it is believed that he was in his eightieth year at the time of his defense of John Peter Zenger. Hamilton was the greatest lawyer in America of the period before the American revolution. Though in poor health, Hamilton made the journey from Philadelphia to New York, a hardship in those days, and acted as Zenger's counsel without a fee.

In defense of his client, Hamilton admitted that Zenger had printed the statements as charged, but attempted to prove the truth of the statements as made. The judge ruled, in accordance with the general law of criminal libel of that day, that truth of an alleged libel could not be permitted in evidence.

Being denied the right to prove the truth of the alleged libel, all that remained for Hamilton was the argument to the jury. This argument was

allowed, although the court insisted, as was the law of that day, that whether the article was libelous or not was a question for the court and not for the jury. Therefore, under ordinary circumstances, an address to the jury would have been useless since Zenger admitted having printed the articles.

However, Andrew Hamilton fully realized that more was involved in the case than the guilt or innocence of the humble printer; he realized that there was involved the larger issue between the people of the province and their royal oppressors. Hamilton's speech in defense of Zenger is a classic in the defense of the rights of the oppressed colonists to give expression to their suffering at the hands of an arrogant and incompetent royal governor; the speech stands as an example of the courage of such men as he, which was so instrumental in the ultimate establishment of our free government.

In opening his argument to the jury, Mr. Hamilton first argued that everyone must have a right to criticize the government or many of its abuses would go uncorrected. He said:

> "For though I own it to be base and unworthy to scandalize any man, yet I think it is even villainous to scandalize a person of public character, . . . if the faults, mistakes, nay even the vices of such a person be private and personal, and do not affect the peace of the public, or the liberty or property of our neighbor, it is unmanly and unmannerly to expose them either by word or writing. But when a ruler of a people brings his personal failings, but much more his vices, into his administration, and the people find themselves affected by them, either in their liberties or properties, that will alter the case mightily; and all the high things that are said in favor of rulers, and of dignities, and upon the side of power, will not be able to stop people's mouths when they feel themselves oppressed,—I mean in a free government."

Mr. Hamilton then reviewed the legal authority of the case and urged the jury not to be influenced by fear or favor. The following quotation from his address to the jury illustrates the power, sincerity and eloquence of the address:

> "Power may justly be compared to a great river, which, while kept within its due bounds, is both beautiful and useful; but when it overflows its banks it is then too impetuous to be stemmed, it bears down all before it, and brings destruction and desolation wherever it comes. If then this is the nature of power, let us at least do our duty, and like wise men (who value freedom) use our utmost care to support liberty, the only bulwark against lawless power, which in all ages has sacrificed to its wild lust and boundless ambition, the blood of the best men that ever lived."

Andrew Hamilton, in conclusion, pointed out why he was in that court defending Zenger. He said:

> "I hope to be pardoned, sir, for my zeal upon this occasion; it is an old and wise caution, that when our neighbor's house is on fire, we ought to take care of our own."

* * * * * * * * * *

"* * * you see I labor under the weight of many years, and am borne down with great infirmities of body; yet, old and weak as I am, I should think it my duty if required, to go to the utmost part of the land, where my service could be of any use in assisting to quench the flame of prosecutions upon informations, set on foot by the government, to deprive a people of the right of remonsrating (and complaining too), of the arbitrary attempts of men in power."

* * * * * * * * * *

"But to conclude; the question before the court and you, gentlemen of the jury, is not of small nor private concern, it is not the cause of a poor printer, nor of New York alone, which you are now trying; no] it may, in its consequences, affect every freeman that lives under a British government on the main of America. It is the best cause; it is the cause of liberty; and I make no doubt but your upright conduct, this day, will not only entitle you to the love and esteem of your fellow citizens; but every man who prefers freedom to a life of slavery, will bless and honour you, as men who have baffled the attempts of tyranny; and by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity and our neighbors, that to which nature and the laws of our country have given us the right, the liberty both of exposing and opposing arbitrary power in these parts of the world, at least, by speaking and writing truth."

The attorney general replied to the argument and then the judge instructed the jury that the article was a libel. The jury were out a short time and then returned with the verdict "not guilty."

Hamilton's victory in this case was widely hailed. Commenting on Hamilton's argument to the jury, a writer in a London newspaper of the time said, "if it is not the law it is better than law, it ought to be law and will always be law wherever justice prevails."

Judge Cadwalader of Pennsylvania said a number of years later, in referring to Hamilton's argument in the Zenger case: "Propositions in this argument, which were, strictly speaking, untenable as points of Anglo-American Colonial law, prevailed, nevertheless, at that day, with the jury. These propositions have since been engrafted permanently upon the political jurisprudence of this continent. If that speech to the jurors who acquitted Zenger had never been uttered, or had not been reported, the framers of the constitutions of the several states might not have been prepared for the adoption of provisions like" those guaranteeing freedom of the press in the discussion of public questions and those providing that in all indictments for libels the jury shall have the right to determine the law and the facts. These provisions appear in the Constitution of the State of California as well as in many other constitutions.

The story of the trial of John Peter Zenger is but another example of how a lawyer rendered a great service not only to his client but also to the nation that was soon to come into existence.

THE TORTOISE AND THE HARE— WAGE AND HOUR VERSION

By J. Stanley Mullin, of the Los Angeles Bar

If you believe that a certain business is not within the provisions of the Wage and Hour Law (Fair Labor Standards Act of 1938) either because of lack of Federal jurisdiction or the existence of a specific exemption—then this is meant for you.

Is it your understanding of the "law" that:

1. A sale for industrial or business purposes is not a "retail" sale?[1]
2. A sale of merchandise to a Federal, State or Municipal government is not a sale at "retail" although the purchaser is the consumer?[2]
3. A night watchman is engaged in the "production" of goods?[3]
4. Any employee unpacking goods shipped from another state is engaged in "interstate commerce"?[4]
5. A company may sell all of its products within the state of manufacture and be engaged in "interstate commerce"?[5]

If these statements of "law" seem unfamiliar to you, then it is time that you become acquainted with the Interpretative Bulletins and Releases issued by the Wage and Hour Division of the Department of Labor.

There you will find that the above are but a few of a vast number of interpretations of law which probably affect your "exempt" client. Since the enactment of the Wage and Hour Law, the Administrator has issued a great many rulings, largely dealing with the coverage of the Act and, significantly, in only a few instances has the Administrator excepted any business or employee activity from the coverage of the Act. The interpretations have been so broad and so far reaching that one Federal District Court judge who was called upon to determine whether certain timbering operations were within the jurisdiction of the Wage and Hour Act quite appropriately stated:

> "Under the interpretation of the . . . Fair Labor Standards Act *as urged by the government, the regulation of labor would embrace not only the man who cut the timber or hauled it to the mill, but also the man who planted the seed and cultivated the trees.* If the interstate commerce clause carries with it such power to thus create a centralized government as against an 'indestructible union, composed of indestructible States' (Texas v. White, 74 U. S. 700) the sooner it is known the better." (Italics added.)
>
> *United States v. Darby,* 32 Fed. Supp. 734, 737 D. C. Geo.—1940).

It is not the purpose here to recite all of the rulings of the Wage and Hour Administrator dealing with the extension of the Federal jurisdiction to activities previously considered to be within the jurisdiction of the several states, but rather to call attention to the pertinent fact that these rulings, some of very doubtful rationale, may rise up to strike the unwary. You will ask the question: "How can a self-serving interpretation of the Act, by the party charged with its enforcement, have any persuasive effect in a court of law, where these questions must

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[1]Wage and Hour Release R-739

[2]Wage and Hour Release R-812.

[3]Interpretative Bulletin No. 1, quoted in *Wood v. Central Sand & Gravel,* 33 Fed. Supp. 40 (D. C.—Tenn. 1940).

[4]Wage and Hour Release R-92.

[5]*Sunshine v. Carver* (U. S. D. C.—Ida., July 1, 1940); *N. L. R. B. v. Sunshine,* 110 Fed. (2d) 780 (C. C. A. 9th-1940).

ultimately be determined?" *The answer to this question rests in the sometimes overlooked rule of statutory construction* "that contemporaneous and practical construction of a statute by those whose duty it is to carry it into effect, plus acquiescence by persons having an interest in the matter, is sufficient to justify the court in resolving any doubt as to the meaning of the language employed by the Legislature in favor of such long unquestioned interpretation." (*Prichard v. Southern Pacific Co.*, 9 Cal. App. (2d) 704 (1935).) Because "persons interested in the matter" include individuals,[6] legislative bodies[7] and the legal profession,[8] it is virtually impossible to escape the charge of acquiescence unless an objection is immediately filed against the Administrator's interpretation.

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[6]A few of the authorities are:

New York Central Securities Corp. v. U. S., 77 L. Ed. (U. S.) 138 (1932). (Construction of Statute regulating consolidations and mergers of railroads.)

U. S. v. Magnolia Petroleum Co., 110 Fed. (2d) 212 (C. C. A. 10th-1939). (Construction of Statute relating to Indian lands.)

U. S. v. Colombia River-Longview, 99 Fed. (2d) 287 (C. C. A. 9th-1938). (Construction of Statute relating to Toll bridges.)

United States v. Philbrick, 30 L. Ed. 559 (1886). (Construction of Statute fixing pay of naval officers.)

The Morris Plan Co. v. Johnson, 100 Cal. App. Dec. 846 (1940). (Tax Statute construed not to be applicable to Morris Plan Bank.)

Colonial Mutual Compensation Insurance Company v. Mitchell, 140 Cal. App. 651 (1934). (Insurance Commissioner acquiesced in accepting deposits in lesser sum than specified in statute.)

Riley v. Thompson, 193 Cal. 773 (1924). (State Treasurer acquiesced in payment of pilot fees to State Board of Pilots.)

Riley v. Forbes, 193 Cal. 740 (1924). (Acquiescence by State Treasurer in accounting methods of Board of Accounting.)

Board of Railroad Commissioners v. Market Street Railway Co., 132 Cal. 677 (1901). (Statute construed not to include street railways.)

People v. Southern Pacific Co., 209 Cal. 578 (1930). (Tax Statute construed not to apply to street railways.)

People v. Antioch, 17 Cal. App. 751 (1911). (General acquiescence in location of boundary of town.)

See also:
23 Cal. Jur., page 776; 10 Cal. Jur. Supp., p. 406.
59 Cor. Jur., page 1025.

[7]*U. S. v. Jackson*, 74 L. Ed. (U. S.) 361, 366 (1930). Statute construed to cover Indian homesteaders as well as allottees. At page 366, the court stated:

> "It is a familiar rule of statutory construction that great weight is properly to be given to the construction consistently given to a statute by the Executive Department charged with its administration . . . (cases) . . . and such construction is not to be overturned unless clearly wrong . . . (cases) . . . If there were any doubt on the question, the silence of Congress in the face of the long continued practice of the Department of the Interior in construing (the) statutes . . . must be considered as 'equivalent to consent to continue the practice until the power was revoked by some subsequent action by Congress.'"

[8]*First National Bank v. Kinslow*, 8 Cal. (2d) 339 (1937). Third party claim procedure construed to be not applicable to real estate; at page 346, the court said:

> ". . . in not a single instance before the present action, so far as we have been able to discover, has any attempt been made to apply said section to real property. From these circumstances, we must draw the irresistible conclusion that the profession during these many years has regarded the section as only applicable to personal property. This contemporaneous construction of the section by the legal profession of the state must be taken as strongly indicating that the only reasonable construction to be given to said section is in line with that accorded to it during the years past as only applying to personal property."

Since 1933, much of the Federal legislation that has been enacted has been deliberately designed to include within its scope as many persons as possible. Customarily, lawyers advise their clients according to what are considered standard rules for the determination of the orbit of Federal jurisdiction, as to be contrasted to the reserved jurisdiction of the sovereign states. The Administrator of the Wage and Hour Law, inspired by the sweeping admonition contained in the Declaration of Policy set forth in Section 2(a) of the Act,[9] and being fully familiar with all of the decisions of our courts dealing with Federal jurisdiction predicated upon the "commerce clause", has taken advantage of the most favorable language contained in those court decisions and, also, has taken advantage of the prerogative of the administrative officer to "interpret" the Act *as he sees it.* As noted above, these interpretations, if acquiesced in, become a powerful factor in any later judicial construction of the Statute, just as the legislative history of the Act is important in statutory construction.[10] To have the prosecutor's interpretation of the law accepted by a court as a "source" of the law is to "lift oneself by one's own bootstraps", but it is a rule that has been built up in our courts over a period of many years. On occasion, the rule has been invoked at the expense of the administrative officer,[11] but in the instant case the administrator has seized time by the forelock and is pressing the rule to his own advantage.

Furthermore, although these Interpretative Bulletins are not yet hoary with age (the oldest being two years), they are already being adopted by the courts as persuasive factors in doubtful cases. (See *Wood v. Central Sand and Gravel,* 33 Fed. Supp. 40 (D.C. Tenn.—1940); *Foster v. National Biscuit Co.,* 31 Fed. Supp. 552 (1940).)

The fact that the Interpretative Bulletins have been issued gratuitously, in the nature of press releases, and introduced with cautious reservations, perhaps accounts for the fact that so little attention has been paid to them. For instance, in the opening sentence of Interpretative Bulletin No. 1, issued September 22, 1938, the administrator states:

> "The statute does not confer upon the administrator any power to issue rulings including industries within the coverage of the Act, or excluding them. . . . Interpretations announced by the administrator . . . serve therefore to indicate merely the construction of the law which will guide the administrator in the performance of his administrative duties, unless and until he is directed otherwise by authoritative ruling of the courts."

Although modest, the administrator is also confident of his success in the courts. In Interpretative Bulletin No. 5, issued December 2, 1938 and revised November 27, 1939, the administrator gives many hypothetical cases of coverage of the Act, some of which are certainly borderline in view of the existing court decisions, and yet the administrator states:

"We feel that we should refrain from taking any position on a case

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[9]"Sec. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce."

[10]*Fleming v. Hawkeye Pearl Button Co.,* 113 Fed. (2d) 52 (8th Cir.-1940).

[11]*Colonial Mutual Compensation Insurance Company v. Mitchell,* 140 Cal. App. 651 (1934).

> which we believe to be so clearly poised on the borderline between coverage and non-coverage."

The conclusion to be drawn is that the administrator considers all of his interpretations and rulings to be indisputable.

The temptation to both lawyer and client alike is to wait until legislation has become an immediate problem, and then do something about it. It is submitted that if this theory is applied to the Administrator's interpretation of the Wage and Hour Law, it may prove disastrous.

If you had planned, like the Hare, to attend to other affairs now and to catch up with the Wage and Hour Tortoise at a later date, you might well give consideration to the lead that Mr. Tortoise has taken in the past two years in issuing his "interpretations" of the law.

Failure to object to the Administrator's interpretations is acquiescence, and acquiescence permits a court to adopt such interpretations and give them the status of law. At the time of the court proceedings, it is to no avail to come forward from hibernation and object to interpretations that may have been made years before. The situation that confronts such a litigant is the same situation that we as a nation are confronted with today—we know *now* that eternal vigilance *was* the price of democracy. We have suddenly become aware of the fact that the democratic system is not just something to be taken for granted as always having existed and always existing in the future. We have suddenly become aware of the fact that when individuals abandon their rights, there are those who are ready to usurp them, with the result being the gradual subjugation of the individual to a wholly impersonal, semi-religious concept, of a "super state", a "super race", or just plain "dictator".

However, this democracy of which we speak is not just something to be considered in its international setting. The word "democracy" is but a description of the relationship between individuals and their government—how we deal with our government and how our government *deals with us*. Therefore, when we as individuals, whether we be lawyers or business men, permit the appropriation of excess power by any governmental agency and fail to be vigilant in the assertion of our proper and reasonable rights as individuals, we must assume the responsibility for the price that we may eventually be called upon to pay. That price we now know is the yoke of subjugation.

One hundred and fifty years of judicial interpretation of our Constitution shows us ever so clearly that law is not a static thing—but variable, subject to interpretation, subject to interpretation by judges who are human beings with various views on economics and political science. What better guide to interpretation is there than the attitude and "acquiescence" of those subject to a certain statute?

Single instances of appropriation of power are not to be taken lightly, or considered insignificant; it is in the aggregation of such single instances that the totalitarian state comes into being. The duty and the requirement of eternal vigilance is incumbent upon every individual, to be asserted promptly and effectively. When "rights" are in the hands of individuals, those individuals collectively constitute a "democracy". When *all* those "rights" are placed in the hands of one individual, we call it "dictatorship". To maintain the rights of individuals they must not only be asserted, but must be pursued with the very passion that prompted the Boston Tea Party—pursued through the judicial courts lest those self-same courts see and hear and learn of but one side—the side of the collectivist. Then, and only then, can we be sure of getting there first—ahead of the Tortoise.

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